

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

3G LICENSING, S.A., et al.,

Plaintiffs,

v.

HTC Corporation,

Defendant.

C.A. No. 17-cv-83-GBW

**JURY TRIAL DEMANDED**

**[HTC'S PROPOSED] VERDICT FORM**

**Instructions:** When answering the following questions and completing this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Please refer to the Final Jury Instructions for guidance on the law applicable to each question.

In this Verdict Form, “3G Licensing” or “3GL” means plaintiff 3G Licensing S.A., “HTC Corp.” means defendant HTC Corporation, “’091 Patent” means “U.S. Patent No. 7,955,091” and “’818 Patent” means U.S. Patent No. 6,856,818.

**QUESTIONS AND ANSWERS**

**I. INFRINGEMENT**

1. Has 3G Licensing proven by a preponderance of the evidence that HTC Corp. imported the accused phones into the United States or otherwise sold the accused phones in the United States?<sup>1</sup>

*Please check "Yes" or "No" below. A "Yes" answer is a finding for 3GL. A "No" answer is a finding for HTC Corp.*

Yes \_\_\_\_\_ No \_\_\_\_\_

***If you answered this question "No," do NOT answer any other questions, leave the remaining questions unanswered and go to the final page of the Verdict Form.***

**A. '091 Patent**

2. Has 3G Licensing proven by a preponderance of the evidence that HTC Corp. directly infringed any of the following claims of the '091 Patent?

*For each asserted claim please check "Yes" or "No" below. A "Yes" answer is a finding for 3GL. A "No" answer is a finding for HTC.*

	Yes	No
a. Claim 1	_____	_____
b. Claim 2	_____	_____
e. Claim 6	_____	_____
f. Claim 7	_____	_____

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<sup>1</sup> **HTC's Position:** Whether HTC Corp. has imported or sold the accused phones in the United States is a threshold issue in this case because Plaintiffs voluntarily dismissed HTC Corp.'s U.S.-based affiliate, HTC America, Inc., the entity responsible for sales in the United States. D.I. 74. HTC Corp. moved for summary judgment of no infringing sales, but the Court denied the motion finding a factual dispute. D.I. 489 at 20-21.

**B. '818 Patent**

3. Has 3G Licensing proven by a preponderance of the evidence that HTC Corp. directly infringed any of the following claims of the '818 Patent with respect to the Accused Verizon phones?

*For each asserted claim please check "Yes" or "No" below. A "Yes" answer is a finding for 3GL. A "No" answer is a finding for HTC.*

	Yes	No
a. Claim 18	_____	_____
b. Claim 19	_____	_____
c. Claim 22	_____	_____
d. Claim 23	_____	_____

4. Has 3G Licensing proven by a preponderance of the evidence that HTC Corp. induced the infringement of any of the following claims of the '818 Patent with respect to the Accused Verizon phones?

*For each asserted claim please check "Yes" or "No" below. A "Yes" answer is a finding for 3GL. A "No" answer is a finding for HTC.*

	Yes	No
a. Claim 18	_____	_____
b. Claim 19	_____	_____
c. Claim 22	_____	_____
d. Claim 23	_____	_____

5. Has 3G Licensing proven by a preponderance of the evidence that HTC Corp. induced the infringement of any of the following claims of the '818 Patent with respect to the

Accused Google-Fi phones?

*For each asserted claim please check “Yes” or “No” below. A “Yes” answer is a finding for 3GL. A “No” answer is a finding for HTC.*

	Yes	No
a. Claim 18	_____	_____
b. Claim 19	_____	_____
c. Claim 22	_____	_____
d. Claim 23	_____	_____

***If you answered all of questions 2-5 regarding infringement “No,” do NOT answer any other questions, leave the remaining questions unanswered and go to the final page of the Verdict Form.***

**II. INVALIDITY**

6. Has HTC Corp. proven by clear and convincing evidence that any of the following claims of the '091 Patent is invalid?

*For each asserted claim please check “Yes” or “No” below. A “Yes” answer is a finding for HTC Corp.. A “No” answer is a finding for 3GL.*

	Yes	No
a. Claim 1	_____	_____
b. Claim 2	_____	_____
e. Claim 6	_____	_____
f. Claim 7	_____	_____

7. Has HTC Corp. proven by clear and convincing evidence that any of the following claims of the '818 Patent is invalid?

*For each asserted claim please check “Yes” or “No” below. A “Yes” answer is a finding for HTC Corp.. A “No” answer is a finding for 3GL.*

		Yes	No
a.	Claim 18	_____	_____
b.	Claim 19	_____	_____
c.	Claim 22	_____	_____
d.	Claim 23	_____	_____

### III. PATENT INELIGIBILITY<sup>2</sup>

11. This question relates to patent eligibility and is unrelated to Section II: Invalidity

(Questions 6-7). Did HTC Corp. prove by clear and convincing evidence that, when taken individually or when taken as an ordered combination, the following claims of the ’818 patent involved only technology which a person of ordinary skill in the art would have considered to be well-understood, routine and conventional as of February 11, 1997?

*For each asserted claim please check “Yes” or “No” below. A “Yes” answer is a finding for HTC Corp. A “No” answer is a finding for 3GL.*

		Yes	No
a.	Claim 18	_____	_____
b.	Claim 19	_____	_____

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<sup>2</sup> **HTC’s Position:** Step 2 for the ’818 patent should not be tried to the jury. “While patent eligibility is ultimately a question of law . . . [w]hether something is well-understood, routine, and conventional to a skill artisan at the time of the patent is a factual determination” is a “question of fact” that must be “proven by clear and convincing evidence.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368- 69 (Fed. Cir. 2018); *see also Aatrix Software*, 882 F.3d at 1128 (“Whether the claim elements or the claimed combination are well-understood, routine, [and] conventional is a question of fact.”). Since the Federal Circuit’s decision in *Berkheimer*, other Court have included step 2 in the jury instructions and verdict form. *See, e.g., Innovation Sciences, LLC v. Amazon.com, Inc., et al.*, 4:18-cv-474, Dkt. No. 845 at p. 22-23 (Final Jury Instructions, Sept. 2, 2020); Dkt. No. 853 at 4 (Verdict Form).

- c. Claim 22 \_\_\_\_\_
- d. Claim 23 \_\_\_\_\_

\_\_\_\_\_

**IV. DAMAGES (IF APPLIABLE)**

*If you answered “Yes” to any of the asserted claims in Question 2-5 on Infringement, and you answered “No” for the corresponding claim in Questions 6-7 (i.e., if you found any claim to be valid and infringed), proceed to answer the following questions 12-15 only for the patent(s) that you found are valid and infringed. If you did not so answer, then leave this section blank.*

**A. '091 Patent**

12. What has 3GL proven by a preponderance of the evidence that it is entitled to as damages for HTC Corp.'s infringing sales?

A royalty of \$ \_\_\_\_\_ per phone on a base of (i.e., the number of) \_\_\_\_\_ infringing phones for a total sum of \$ \_\_\_\_\_.

**B. '818 Patent (Verizon Phones)**

13. What has 3GL proven by a preponderance of the evidence that it is entitled to as damages for HTC Corp.'s infringing sales?

A royalty of \$ \_\_\_\_\_ per phone on a base of (i.e., the number of) \_\_\_\_\_ infringing phones for a total sum of \$ \_\_\_\_\_.

**C. '818 Patent (Google-Fi Phones)**

14. If you found that HTC Corp. has infringed **any** asserted claim of the '818 patent and that the asserted claim is not invalid for Google-Fi Phones, on what date was 3GL first entitled to damages from HTC Corp.?

Date: \_\_\_\_\_

15. What has 3GL proven by a preponderance of the evidence that it is entitled to as damages for HTC Corp.'s infringing sales of Google-Fi Phones?

A royalty of \$ \_\_\_\_\_ per phone on a base of (i.e., the number of)



\_\_\_\_\_ infringing phones for a total sum of \$ \_\_\_\_\_.

*Answer Question 16 only if you found one or more of the asserted claims to be infringed in Questions 2-5 and you did not find the infringed claim(s) to be invalid in Questions 6-7.*

16. Has 3GL proven by a preponderance of the evidence that HTC Corp. willfully infringed **any** asserted claim of any of the Asserted Patents ?

*A “Yes” answer is a finding for 3GL. A “No” answer is a finding for HTC Corp.*

	Yes	No
'091 Patent	_____	_____
'818 Patent	_____	_____

**Unanimous Verdict**

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Date

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Foreperson

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Juror

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Juror

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Juror

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Juror

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Juror

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Juror

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Juror